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A new contra culprit

Some see Congress lax on oversight

By Charles Green
and R.A. Zaldivar
Inquirer Washington Bureau

WASHINGTON — When Congress begins hearings on the Iran-contra affair next month, the failings of the Reagan administration will be on display. But another aspect of the controversy will receive scant attention: the shortcomings of Congress itself.

While no one contends that anyone but President Reagan and his administration are to blame for selling arms to Iran, some question whether Congress doesn't bear some responsibility for what happened with regard to the Nicaraguan contra rebels.

"All through this issue there hasn't been any clear-cut congressional position, other than the fact they wished it would go away," said a former government official who supported the contras and asked not to be named. "A lawyer for the defense can accurately portray a situation of 'Will the real Congress please stand up?'"

The criticisms boil down to these:

- Congress was inconsistent and ambiguous in deciding how far the U.S. government could go in aiding the Nicaraguan rebels. Laws sometimes were so murky that even the legislators who wrote them could not agree on what they meant.

- Congress failed to oversee the administration's dealings with the contras adequately despite suspicions about the activities of Lt. Col. Oliver L. North, the National Security Council aide who ran a secret supply network that funneled millions of dollars in weapons, materiel and cash to the contras at a time when Congress banned direct government assistance.

Lawmakers who subscribe to the criticisms — and there are many who do not — say one reason congressional scrutiny fell short was that Democrats were leery of confronting a popular president and of being portrayed as soft on communism.

"Congress didn't seem to care that the law was being violated," said Rep. Jim Leach (R., Iowa). "I think the Democrats basically let the country down when it became clear the President was extremely popular. They were afraid to take him on."

Some even suggest it served the purpose of skittish lawmakers to look the other way when reports of the NSC's involvement with the contras began surfacing in 1985. To the extent the NSC could keep the rebels funded through outside sources, Congress could avoid another wrenching vote on contra aid, perhaps the most contentious foreign policy issue since the Vietnam War.

"As long as that [the secret supply] was going on, clearly there was some life-support system for the contras," said a former congressional aide involved in the contra legislation who asked not to be identified. "It filled in the cracks a little bit so that Congress would not have to vote on the issue and take the heat on it."

Such criticisms, not surprisingly, largely have been dismissed on Capitol Hill. "Balderdash!" said Rep. Dante B. Fascell (D., Fla.), chairman of the House Foreign Affairs Committee. "The administration didn't get what it wanted, so they went ahead and did it another way."

He and others said the intent of Congress was always clear, even if laws were sometimes imprecise. Moreover, they said, congressional oversight of the contra program was a victim of administration deception, not a partner to it.

The question of NSC involvement with the contras will be first on the agenda when congressional hearings into the Iran-contra affair begin May 5. The sessions will examine a network run by North and his allies that raised tens of millions of dollars — some allegedly diverted from Iranian payments for U.S. arms — to pay for guns, aircraft, equipment and living expenses for the contras.

The aid clearly violated the spirit of the law; whether it violated the letter of the law remains to be proved.

For four years, that law kept changing. In 1983, military aid to the contras was legal; in 1984, it was forbidden. In 1985, only humanitarian aid was allowed; by 1986, it was all right to send guns again. Throughout, there were no penalties for violating the statutes. "What emerged," said the Tower Commission, "was a highly ambiguous legal environment."

Contra aid became a series of compromises tailored to win the votes of several dozen House and Senate members who held the balance of power in a divided Congress.

"There was no particular rationale to the various restrictions and limitations on contra aid," said Jeffrey Bergner, who was staff director of the Senate Foreign Relations Committee when Sen. Richard G. Lugar (R., Ind.), a contra supporter, headed the panel. "It would be a mistake to look for coherence or strategy. It didn't reflect conscious planning. It reflected legislative compromise."

Much of the ambiguity centered on the various incarnations of the Boland amendment, named after its sponsor, Rep. Edward P. Boland (D., Mass.). Passed in 1982 after Reagan authorized covert aid for the contras, the first Boland amendment prohibited the CIA and the Defense Department from spending funds toward "overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras."

But the covert CIA aid continued — after Reagan said the rebels were not seeking to topple the Nicaraguan government but rather to prevent it from sending arms to other Central American revolutionaries.

"It became clear the administration was going to cynically ignore the Boland amendment," said Leach, a staunch opponent of contra aid. "But Congress passed the funds to allow the executive to ignore the law."

Congressional discontent grew in 1983 and 1984, after reports that the CIA helped direct the mining of Nicaraguan harbors and authored a contra-training manual that sanctioned assassination as a tactic in guerrilla warfare. In October 1984, a new Boland amendment was passed barring any agency of government "involved in intelligence activities" from spending money to support military operations in Nicaragua.

However, North stepped up his involvement with the contra-supply operation after the NSC received legal advice that it was not covered by the law. The Tower Commission said the opinion apparently came from the President's Intelligence Oversight Board, an unusual source of legal advice for the NSC, which has its own counsel.

In any event, the ban did not remain firm. In 1985, under intense pressure from Reagan, Congress agreed to provide \$27 million in "humanitarian" aid to the contras. Within a few months, it agreed to

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broaden the definition of humanitarian aid to include radios, trucks and other gear useful in combat.

Then, in December 1985, Congress relaxed restrictions on the CIA, allowing it to offer "advice" to the contras as long as it did not involve individual military operations. Even the legislators who wrote the law couldn't agree where to draw the line. Within days of the law's passage, House Intelligence Committee Chairman Lee H. Hamilton (D., Ind.) told the CIA it could not advise the contras on logistical matters, while Senate Intelligence Committee Chairman David Durenberger (R., Minn.) told the CIA it could.

Finally, last year, a sharply divided Congress agreed to provide \$100 million to the contras, including \$70 million in military aid. All restrictions on CIA involvement were lifted.

Administration officials said that they were frustrated by the shifting rules — and acknowledged that they wanted to stretch the limits of the law to aid the contras. "Almost everyone in the administration wanted to go right up to the line," said a former administration official involved in the contra-aid issue, who spoke on the condition he not be identified by name or former position. "And everybody thought Ollie was dancing on the line."

Adm. Stansfield Turner, CIA director during the Carter administration, recalls newspaper reports in 1985 that North was aiding the contras despite congressional restrictions and said he was upset that Congress wasn't cracking down on the gung-ho Marine. He said Democrats told him "they just weren't willing to take on a popular President."

Those investigations that were begun didn't get far. The House Intelligence Committee questioned former national security adviser Robert C. McFarlane about North's activities in 1985 and was assured in writing that "at no time did I or any member of the National Security Council staff violate the letter or spirit of the law." In 1986, the committee questioned North directly and was similarly assured that the law was being followed, panel members said.

"We learned from bitter experience that we were lied to," said committee member Rep. Matthew F. McHugh (D., N.Y.).

"You could make the argument that we didn't go far enough in pushing it," said Rep. David E. Bonior (D., Mich.), a leading opponent of contra aid. "But this is a place that gives the benefit of the doubt to the administration, usually. We don't like to admit that people come before us and just lie to us."

But even some contra sympathizers believe Congress could have done a better job of oversight on the contra issue by exhibiting the same kind of investigative ardor in evidence now.

"Congress is like Dalmatian dogs in the fire station," said the former administration official involved in the contra issue. "The bell goes off and they jump on the machine whether it's a false alarm or not. Those guys are jumping on investigations all the time. And 80 percent of them, they just root around and come up with nothing."

"Maybe the problem is that they're trying to root out too many rabbit holes instead of concentrating on the serious ones. And maybe this was a serious one."